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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,500	03/24/1999	ANDREW BICKFORD HAYNS	HAYNS=1	2980

1444            7590            07/31/2002

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 07/31/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/202,500</b>	Applicant(s) <b>Hayns</b>
	Examiner <b>Ivars Cintins</b>	Art Unit <b>1724</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on May 10, 2002
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 18-23 and 30-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 18-23 and 30-33 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: _____                                    |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-23 and 30-33 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegand et al. in view of Novak. As pointed out in the previous Office Action, Wiegand et al. discloses an oil sorbent mat (filter) comprising a non-woven sheet-like matrix (col. 2, line 13) containing cellulose fibers, such as cotton (col. 2, line 4), which cellulose fibers have been treated with a sizing agent (col. 2, lines 7-8). The reference further discloses that the mat has a density within the recited range (col. 3, line 59); and also teaches utilizing foam material in the matrix (see col. 2, line 62). Accordingly, this primary reference discloses the claimed invention with the exception of the particular sizing material employed, the type of foam (i.e. open-cell) material employed (claim 22), and the thickness of the matrix (claim 32). Novak discloses sizing cellulosic fibers (see page 1, lines 93-95) with a sizing agent of the type recited (see page 1, line 98). It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to substitute the sizing agent of Novak for the sizing agent of Wiegand et al., since this secondary reference sizing agent is capable of imparting water repellency to the cellulose fibers of the primary reference in substantially the same manner as the sizing agent of said primary reference, to produce substantially the same results. Also, the exact type of polymeric foam material employed, and the exact thickness of the mat are not seen to materially affect the overall properties of the modified primary reference product, or to produce any new and unexpected result; and are therefore deemed to be obvious matters of choice, insufficient to patentably distinguish claims 22 and 32.

Applicant's arguments filed May 10, 2002 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that Wiegand does not disclose a filter, but instead discloses a sorbent for depositing on top of water which is polluted with oil, so that the sorbent will absorb and remove the oil. It is pointed out, however, that the porous web or mat-like structure of the reference is structurally indistinguishable from a "filter" and is therefore inherently capable of being employed as a filter. The fact that this reference may not utilize the disclosed material in this manner

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is not deemed to be persuasive of patentability for product claims 18-23 and 30-33, because it is well settled that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate this product from a prior product satisfying the claimed product limitations. See *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963); and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Applicant also argues that there is nothing in either Novak or Wiegand which would lead the person of ordinary skill in the art to use Novak's sizing material in place of Wiegand's sizing material. Again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out that Wiegand et al. clearly discloses sizing cellulosic fibers with a water repellent material (see col. 2, lines 7-8). It is further pointed out that Novak teaches sizing cellulosic fibers (see page 1, lines 93-95) with a sizing agent of the type recited (see page 1, line 98) to make these cellulosic fibers water repellent. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the sizing agent of Novak for the sizing agent of Wiegand et al., since this secondary reference sizing agent is capable of imparting water repellency

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to the cellulose fibers of the primary reference in substantially the same manner as the sizing agent disclosed therein, to produce substantially the same results.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

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The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Ivars Cintins*  
Ivars C. Cintins  
Primary Examiner  
Art Unit 1724

I. Cintins  
July 28, 2002